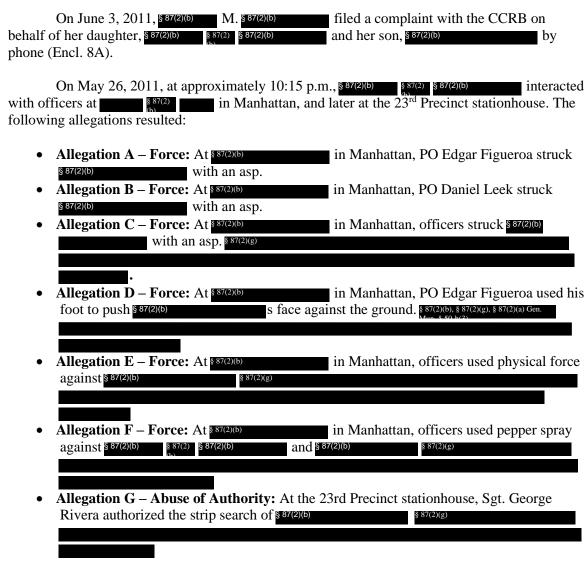
# CCRB INVESTIGATIVE RECOMMENDATION

Investigator:	Tear	n:	CCRB Case #:	<b>✓</b> Force	☐ Discourt.	U.S.
Owen Godshall	Tear	n # 5	201107141	✓ Abuse	O.L.	✓ Injury
In aid and Data(a)	T and			Dunningst	10 Ma COL	EO SOI
Incident Date(s)	§ 87(2)	ation of Incident:		Precinct:	18 Mo. SOL	EO SOL
Thursday, 05/26/2011 10:15 PM		inct stationhouse	and at the 23rd	23	11/26/2012	11/26/2012
Date/Time CV Reported	CV 1	Reported At:	How CV Reported	d: Date/Tim	e Received at CC	RB
Fri, 06/03/2011 8:43 AM	CCR	RВ	Phone	Fri, 06/03	/2011 8:43 AM	
Complainant/Victim	Type	Home Add	lress	· · · · · · · · · · · · · · · · · · ·		
Witness(es)		Home Add	lress			
Subject Officer(s)	Shield	TaxID	Command			
1. POM Edgar Figueroa	08440	947751	023 PCT			
2. SGT George Rivera	01161	896653	023 PCT			
3. POM Daniel Leek	26566	945913	023 PCT			
4. Officers			023 PCT			
Witness Officer(s)	Shield No	Tax No	Cmd Name			
1. SGT James Gerrity	00758	925344	023 PCT			
2. LT William Cook	00000	903677	INT CIS			
3. POM Christopher Banas	04493	934447	023 PCT			
Officer(s)	Allegation			Inv	estigator Reco	mmendation
A.POM Edgar Figueroa	Force: At § 87(2) Figueroa struc	(b) k <sup>§ 87(2)(b)</sup>	in Manhattan, PO Ed with an asp.	lgar		
B.POM Daniel Leek	Force: At § 87(2)(b) struck		in Manhattan, PO Da vith an asp.	nniel Leek		
C. Officers	Force: At § 87(2) § 87(2)(b)	with an	in Manhattan, officer asp.	rs struck		
D.POM Edgar Figueroa	Force: At § 87(2) foot to push § 8		PO Edgar Figueroa us face against the	used his ground.		

Officer(s)	Allegation	Investigator Recommendation	
	Force: At \$\frac{8}{8}7(2)(b)\$ in Manhattan, officers used pepper spray against \$\frac{8}{8}7(2)(b)\$ is \$\frac{8}{8}7(2)(b)\$ and \$\frac{8}{8}7(2)(b)\$		
G.SGT George Rivera	Abuse: At the 23rd Precinct stationhouse, Sgt. George Rivera authorized the strip search of §87(2)(b)		

# **Case Summary**



This case was originally assigned to Investigator Henry on June 10, 2011. The case was reassigned to the undersigned, Investigator Godshall, on April 23, 2012, when Investigator Henry went on extended leave.

# **Results of Investigation**

#### **Civilian Statement(s)**

Complainant: \$87(2)(b)

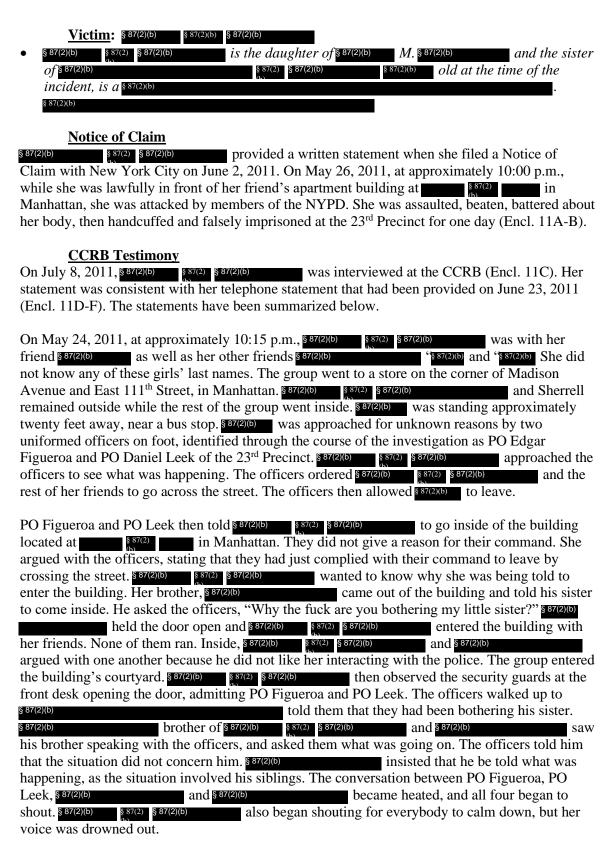
\$87(2)(b)

is the mother of \$87(2)(b)

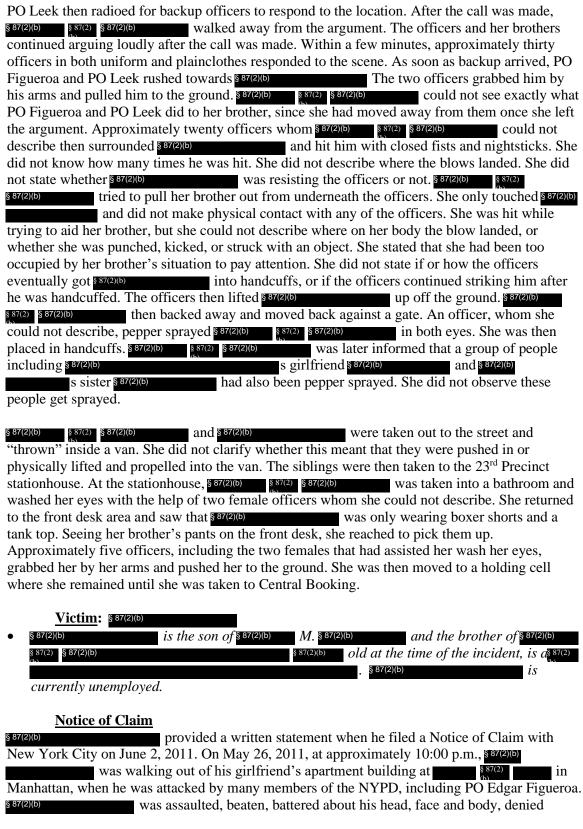
M. \$87(2)(b)

provided a telephone statement to the CCRB on June 23, 2011 (Encl. 8A). She did not observe the incident and therefore, her testimony could not be used to assess the allegations.

Page 2 CCRB Case # 201107141



Page 3 CCRB Case # 201107141

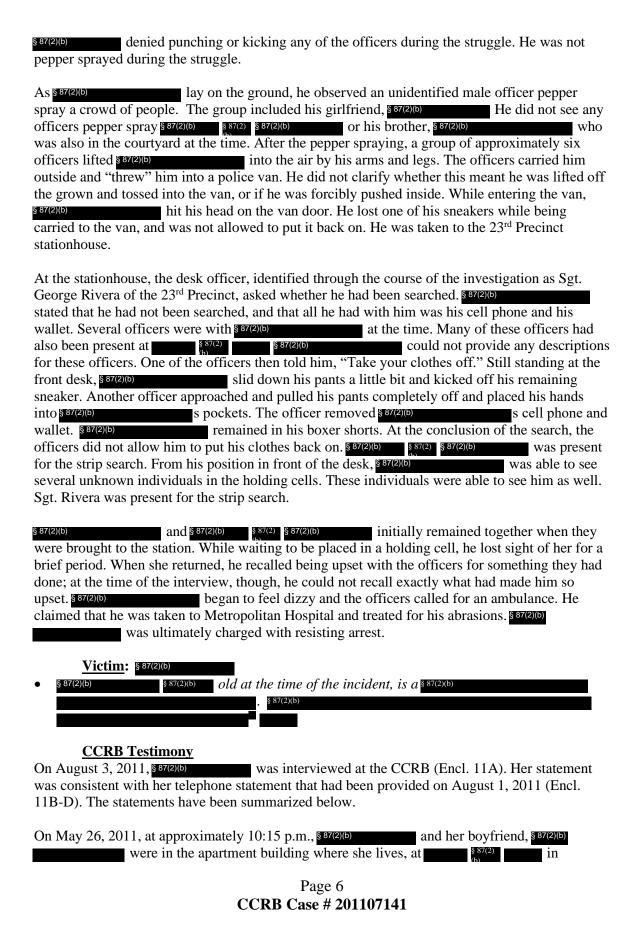


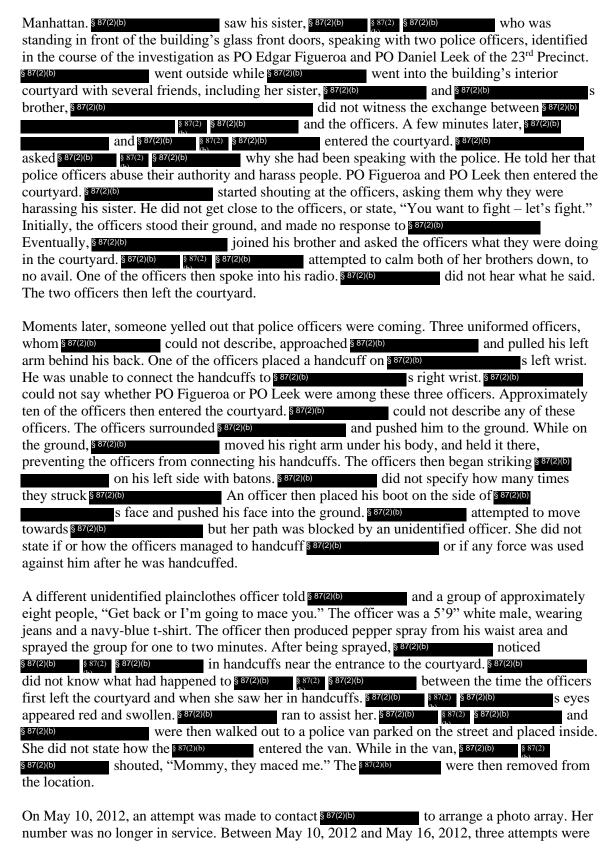
medical attention, handcuffed and falsely imprisoned at the 23<sup>rd</sup> Precinct for two days. (Encl. 10A-B)

#### **CCRB Testimony** On July 8, 2011, § 87(2)(b) was interviewed at the CCRB (Encl. 9C-9E). The statement has been summarized below. On May 26, 2011, at approximately 7:15 p.m., § 87(2)(b) had consumed approximately 3 cups of wine. He did not feel intoxicated afterwards, and could recall his actions completely. At approximately 10:15 p.m., § 87(2)(b) and his girlfriend § 87(2)(b) inside the lobby of in Manhattan. A fight had occurred in the area earlier that day at an unknown time, and officers were still in the vicinity, \$87(2)(b) observed his sister, \$87(2)(b) \$87(2) \$87(2)(b) through the building's glass front doors. His sister was engaged in an argument with two uniformed police officers, identified in the course of the investigation as PO Edgar Figueroa and PO Daniel Leek of the 23<sup>rd</sup> Precinct. He did not know how the argument had started. § 87(2)(b) opened the door and asked, "What the fuck is going on?" § 87(2)(b) § 87(2) (b) said that the argument was not serious. She then entered the building, accompanied by approximately three friends of hers that § 87(2)(b) did not know. § 87(2)(b) berated his sister, telling her that she should not be interacting with the police because they are abusive. The siblings then entered the building's courtyard. A security guard then opened the building's front doors and allowed PO Figueroa and PO Leek inside. The officers entered the courtyard's entrance approximately fifteen feet away from [3.57(2)(5)] but they did not approach or speak to him. § 87(2)(b) continued berating his sister. He told her that police officers like to harass people, and said that officers are "punks." PO Figueroa then made a call on his radio. Approximately two minutes later, PO Figueroa told § 87(2)(b) "You're under arrest." PO Figueroa then pushed § 87(2)(b) into a nearby gate. § 87(2)(b) stumbled after being pushed, but did not during this action. fall down. PO Figueroa did not issue any commands to §87(2)(b) Approximately thirty additional officers then entered the courtyard, coming in behind [887(2)(b)] The officers were mostly white, and in a mix of plainclothes and uniforms. One of the officers was either a white or Hispanic female. Several of these officers then approached An officer twisted § 87(2)(b) s right arm back and placed a handcuff on his right wrist. The group of officers then pushed him down to the ground. PO Figueroa placed his boot on the left side of \$87(2)(b) s face, pushing his face into the sidewalk, causing abrasions. While on the ground, §87(2)(b) was able to move his right hand, which was still handcuffed, under his chest. The officers attempted to pull his right arm behind his back to connect the handcuffs to the left arm, which they had control of. [57(2)(b)] was punched and hit with asps on his back and legs by the officers approximately twenty times while they tried to control his right hand. These officers were eventually able to pull s hands behind his back and handcuff him. The struggle to handcuff him lasted approximately five to ten minutes. § 87(2)(b) initially stated that he was not hit after he was handcuffed, but later stated that he received approximately three more blows to his back after he was handcuffed. § 87(2)(b) did not see the officers that

Page 5
CCRB Case # 201107141

delivered these blows. He did not specify whether these blows were punches, kicks, or from a baton. He did not state whether he continued resisting the officers after he was handcuffed. §87(2)(b)





Page 7
CCRB Case # 201107141

made to call her mother, \$87(2)(b) , the emergency contact \$87(2)(b) had provided during her interview, in an attempt to locate a new telephone number. On May 22, 2012, a Lexis Nexis search returned a disconnected telephone number for \$87(2)(b)
Attempts to Contact Civilians  • \$\$\\$\\$\\$\\$\\$\\$\\$\\$\\$\\$\\$\\$\\$\\$\\$\\$\\$\\$\
• \$87(2)(b) \$87(2)(c)
NYPD Statement(s):  Subject Officer: PO EDGAR FIGUEROA  PO Edgar Figueroa, \$87(2)(b)  On May 26, 2011, PO Figueroa worked from 1:30 p.m. until 12:35 a.m. He was assigned to a foot post with PO Daniel Leek, and was in uniform.
Memo Book  At 10:15 p.m. PO Figueroa told \$87(2)(b) \$87(2)(b) to move from in front of \$27(2)(b) appeared and cursed at PO Figueroa. Additional units were called to the location and at 10:31 p.m. two arrests were made (Encl. 12A-C).
According to the criminal complaint reports and arrest reports for \$87(2)(b) and which were prepared by PO Figueroa, both individuals were arrested at 10:31 p.m., inside of \$87(2)(b) as reports stated that he was "acting in a loud and boisterous behavior by aggressively screaming and cussing at the police." \$87(2)(b) fought with the arresting officers by refusing to be handcuffed. He was charged with obstructing governmental administration, resisting arrest, and two counts of disorderly conduct for violent behavior and unreasonable noise. The narratives in \$87(2)(b) \$87(2)(b) \$87(2)(c) \$87

Page 8 CCRB Case # 201107141 with obstructing governmental administration, resisting arrest, and disorderly conduct (Encl. 12D-M).

#### **Criminal Court Complaint** In the Criminal Court Complaint against § 87(2)(b) PO Figueroa stated that § 87(2)(b) behaved in an aggressive and violent manner during their interaction, screaming "Fuck them, fuck them, they ain't nobody, ignore them" and, "What, you want to fight, let's fight" in PO Figueroa's face. Later, \$87(2)(b) resisted PO Figueroa's attempts to handcuff him by moving his arms. In the Criminal Court Complaint against §87(2)(b) Schnholster, PO Figueroa stated that § 87(2)(b) § 87(2) (b) interfered in an arrest by standing between PO Figueroa and the arrested individual. She also pushed PO Figueroa away from the individual. PO Figueroa asked § 87(2)(b) § 87(2)(b) to cease her interference, but she refused (Encl. 12N-P). **Medical Treatment of Prisoner Report** According to the Medical Treatment of Prisoner Report for 87(2)(b) which was filled out by PO Figueroa, \$87(2)(b) \$87(2) (b) had mace in her eyes. She was treated at Metropolitan Hospital (Encl. 12Q). **CCRB Testimony** On October 25, 2011, PO Edgar Figueroa was interviewed at the CCRB (Encl. 12R-S). On May 26, 2011, at approximately 10:15 p.m., PO Figueroa and PO Leek observed \$87(2)(0) 87(2) and a group of approximately five females talking in front of for about twenty minutes. Sgt. Gerrity had told PO Figueroa to keep the location clear because there had been a large group fight at the location earlier that same day. PO Figueroa informed and the other females to move from the location. § 87(2)(b) and her friends moved from the location. After approximately fifteen minutes, § 87(2)(b) and one additional female returned to the location and stood there and talked again. PO Figueroa approached and told them to move a second time. 387(2)(b) and her friend ignored PO Figueroa's command. He then explained that he had to clear the area due to the earlier fight. His tone was not confrontational. § 87(2) § 87(2)(b) s brother, saw PO Figueroa speaking to his sister through a glass window from inside of approximately fifteen feet away. He opened the door to the building and screamed at \$87(2)(b) \$87(2)(b) her to come inside. She then entered the building. § 87(2)(b) then stepped out of the building, but did not approach PO Figueroa. He stated aloud, "Fuck those pigs." PO Figueroa did not clarify whether § 87(2)(b) directed this remark to the officers. PO Figueroa said, "Come here." § 87(2)(b) then ran into the building. PO Figueroa decided to follow intending to ask him why he had reacted in such an extreme manner to the officers' presence. The building's security guard allowed PO Figueroa and PO Leek inside. PO Figueroa told § 87(2)(b) "Stop, come here." § 87(2)(b) continued walking out into the building's courtyard, and the officers followed. There were approximately twenty people inside of the courtyard. PO Figueroa could smell alcohol and marijuana. One individual, later identified through the course of the investigation as § 87(2)(b) s brother § 87(2)(b) said, "Leave my brother alone." § 87(2)(b) approached the officers and removed his shirt. He then asked whether the officers wanted to fight. §87(2)(b)

Page 9 CCRB Case # 201107141

then said, "You guys want to fight, let's fight." Since he and his partner were outnumbered, PO

Figueroa called for backup.

• On May 26, 2011, PO Leek worked in uniform from 4:00 p.m. until 12:35 a.m. assigned to foot post 13 with PO Figueroa.

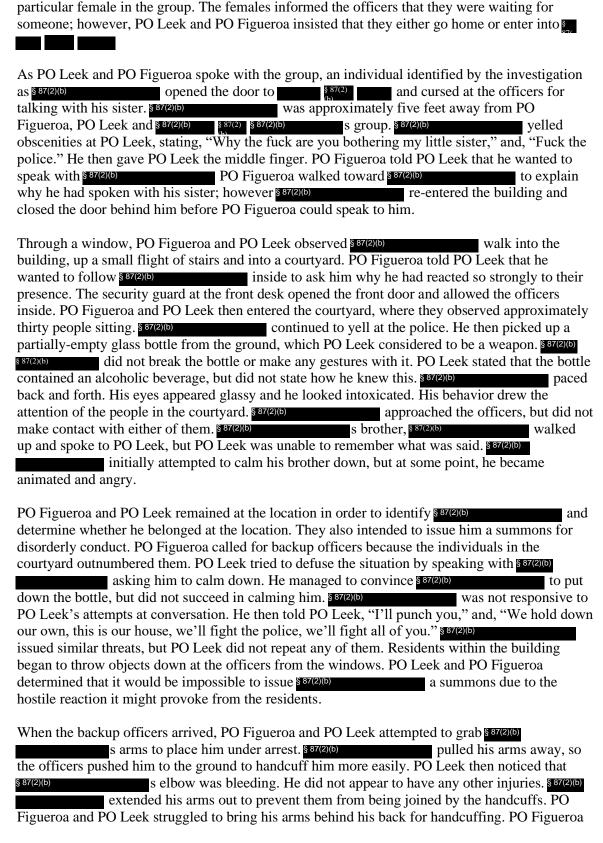
#### Memo Book

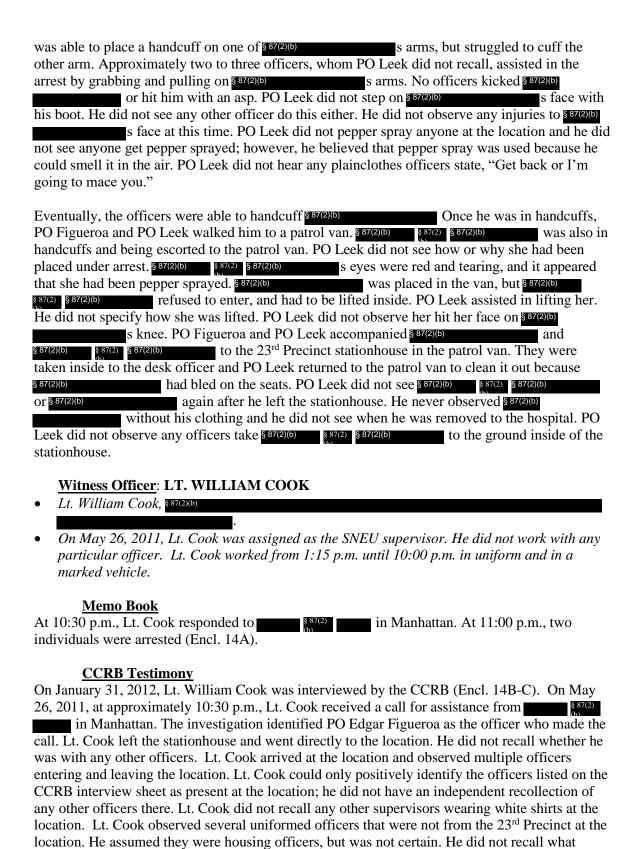
At 10:31 p.m., PO Figueroa arrested two individuals. A large crowd formed and the officers requested assistance (Encl. 13A-C).

# **CCRB Testimony**

On December 12, 2011, PO Leek was interviewed at the CCRB (Encl. 13D-F). On May 26, 2011, PO Leek was informed by Sgt. Gerrity that a fight had occurred on the corner of East 112<sup>th</sup> Street and Madison Avenue prior to his tour. Sgt. Gerrity wanted PO Leek and PO Figueroa to keep the corner clear of all individuals. At approximately 10:15 p.m., PO Leek observed approximately five females, including \$87(2)(b) \$87(2)(c) \$87(2)(c)\$ standing on the corner. He told them that a fight had occurred and that they needed to keep the location clear. PO Leek and PO Figueroa did not request any identification from any of the females and they did not speak with any

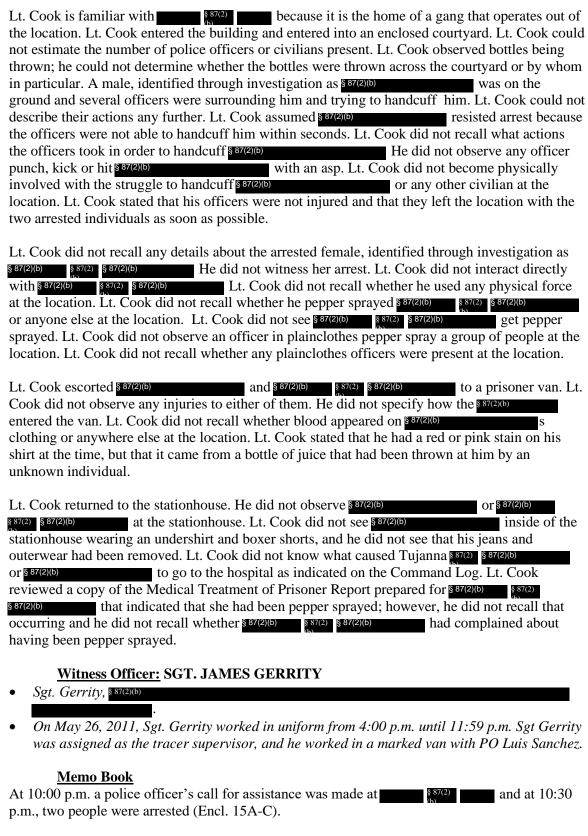
Page 10 CCRB Case # 201107141





Page 12 CCRB Case # 201107141

actions these officers took.



# **CCRB** Testimony

On January 18, 2012, Sgt. Gerrity was interviewed at the CCRB (Encl. 15D-E). Earlier in the day on May 26, 2011, a fight had occurred in the vicinity of in Manhattan. Two officers were placed on the corner to make sure the area stayed calm. At approximately 10:36 p.m., he responded to to an officer's call for assistance. Sgt. Gerrity observed multiple police officers at the location and two individuals, identified through the course of the investigation as savent and savent and savent stated that there were officers from both the housing unit and the 23<sup>rd</sup> Precinct present. Sgt. Gerrity observed the savent stated that there were physically thrown into the van. All of the officers were in uniform.

#### Witness Officer: PO CHRISTOPHER BANAS

- PO Banas, § 87(2)(b)
- On May 26, 2011, PO Banas worked from 2:00 p.m. to 10:35 p.m. He was assigned to Anti-Crime with PO Carl Achille. He was in uniform, and assigned to an unmarked yellow taxi cab, RMP #4308.

#### Memo Book

PO Banas did not have any memo book entries regarding the incident (Encl. 16A-B)

#### **CCRB Testimony**

On June 27, 2012, PO Banas was interviewed at the CCRB (Encl. 16C-D). PO Banas did not recall the incident. He was still unable to recall the incident after being given a description of the what occurred. PO Banas did not recognize photographs of \$87(2)(5)

87(2) \$87(2)(5) PO Banas also stated that given the location of the incident, officers from multiple commands were likely to have responded to any call for backup.

#### **Officers Not Interviewed**

- PO Luis Sanchez and PO Carl Achille were not interviewed because their testimony would not change the recommended dispositions of any of the allegations.
- Sgt. George Rivera was not interviewed because he had retired. His retirement was confirmed by the investigation on September 29, 2011.

#### **Medical Records**

# Hospital Records Ser(2)(b) Hospital has no records of ever treating Ser(2)(b) Ser(2)(b) Ser(2)(c) Ser(2)(c) Ser(2)(d) Ser(2)

#### **NYPD Document(s)**

# **SPRINT #X16176**

According to the SPRINT report, PO Figueroa called for backup units to at 10:33 p.m. RMP #9095, the tracer sergeant, identified by the investigation as Sgt. Gerrity, a lieutenant, identified by the investigation as Lt. Cook, and foot post 13 all responded to the scene. No officers were injured. Two ambulances were directed to the 23<sup>rd</sup> Precinct at 10:41 p.m., and

Page 14 CCRB Case # 201107141 arrived at 11:00 p.m. Lt. Cook reported that two arrests were made at the scene at 10:31 p.m. The arrests were assigned to foot post 13. The two perpetrators resisted arrest (Encl. 18A-D).

# **Arrest Photographs**

s arrest photograph shows him with several small scrapes on the right side of his face, on his temple, cheek and near his eye (Encl. 18E). \$87(2)(b) \$87(2)(

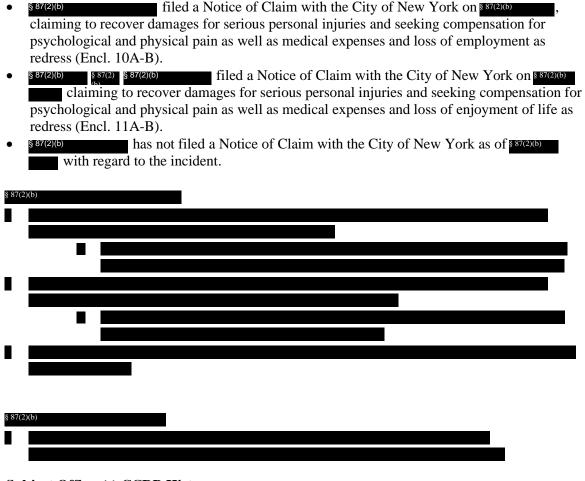
#### Roll Call - 23rd Precinct

According to the tour 3 roll call for May 26, 2011, PO Figueroa and PO Leek were assigned to foot patrol 14 at the time of the incident. Lt. Cook was assigned as the supervisor of operations in RMP #5818, with PO Gonzalez and PO Habrahamson as his operators. Sgt. Gerrity was assigned as the tracer sergeant in RMP #5372, with PO Frias and PO Sanchez as his operators. Sgt. Rivera was assigned as the desk sergeant. PO Christopher Banas was assigned to Anti-Crime (Encl. 18G-P).

# Command Log – 23<sup>rd</sup> Precinct

According to the command log for the 23 <sup>rd</sup> Precinct on May 26, 2011, \$87(2)(b) and
87(2)(b) \$87(2) \$ 87(2)(b) were both arrested by PO Figueroa. The arrests were both
upervised by Lt. Cook. §87(2)(b) s physical condition was listed as intoxicated.
requested medical attention, but the type was not specified. He was
emoved to \$87(2)(b) Hospital at 11:00 p.m., and returned at 3:20 p.m. on \$87(2)(b). No
mention was made of a strip search. § 87(2)(b) § 87(2)(b) complained of bumps on her
head and pains to her right wrist. She was removed to \$87(2)(b) Hospital at 11:30 p.m., and
eturned at 6:10 a.m. on § 87(2)(b) . No mention was made of pepper spray (Encl. 18Q-R).
87(2)(b), § 87(2)(a) 160.50

**Status of Civil Proceedings** 



# **Subject Officer(s) CCRB History**

- PO Edgar Figueroa has been a member of the service for 3 years and there are no substantiated CCRB allegations against him (Encl. 2A).
- PO Daniel Leek has been a member of the service for 4 years and there are no substantiated CCRB allegations against him (Encl. 3A).

#### **Conclusion**

#### **Identification of Subject Officer(s)**

PO Edgar Figueroa acknowledged interacting with \$87(2)(b) and \$87(2)(b) and the \$87(2)(b) Therefore, Allegations A and D have been pleaded against him.
 PO Daniel Leek acknowledged that he interacted with \$87(2)(b) and \$87(2)(b) and \$87(2)(b) and \$87(2)(b) and \$87(2)(b) and the \$87(2)(b) Therefore, Allegation B has been pleaded against him.

- Sgt. Rivera was listed as the desk sergeant on the 23<sup>rd</sup> Precinct roll call at the time of the incident. As the desk sergeant, he would be responsible for any strip searches conducted in the 23<sup>rd</sup> Precinct. Therefore, Allegation G has been pleaded against him.
- The officers who assisted PO Figueroa and PO Leek in handcuffing \$87(2)(b) could not be identified. Neither the civilians nor the officers interviewed gave any descriptions for these officers. The officers all stated that officers from multiple commands

Page 16 CCRB Case # 201107141 responded to the location, which is located within a few blocks of four separate precincts and is across the street from a NYCHA housing development. Given the lack of descriptions and the large number of commands likely to be involved, it is impossible to identify these officers. Therefore, Allegations C, E and F have been pleaded against "officers" from an unknown command.

#### **Allegations Not Pleaded**

- alleged that PO Figueroa and PO Leek stopped her friend known only to her as, \$87(2)(b) however, she did not provide the CCRB with any contact information for \$87(2)(b) The CCRB was unable to contact the individual for necessary information to assess the allegation and therefore, a stop allegation was not pleaded.
- alleged that PO Figueroa told him he was under arrest and pushed him into a gate. Because this did not knock \$87(2)(6) over or cause him any injuries as alleged the force used was minimal, and consistent with the force used generally to arrest individuals. Therefore, an allegation of force was not pleaded.
- \$87(2)(b) alleged that a group of officers, including PO Figueroa and PO Leek, punched and kicked him while trying to handcuff him. Since he also alleged that he was struck with asps at the same time, the punches and kicks have been subsumed into the asp allegation.
- \$87(2)(b) \$87(2)(c) alleged that she was struck while trying to reach for her brother. She could not describe where she was hit, how she was hit, or who hit her. The blow did not cause any injuries. Her reaching towards \$87(2)(b) also constitutes interference with an arrest. Therefore, an allegation of force was not pleaded.
- \$87(2)(b) \$87(2)(c) alleged that \$87(2)(b) had been pepper sprayed, although she did not see it occur. \$87(2)(b) alleged that \$87(2)(b) was also pepper sprayed. \$87(2)(b) and \$87(2)(b) failed to participate with the investigation; therefore, a pepper spray allegations were not pleaded against officers regarding these specific individuals.
- \$87(2)(0) and \$87(2)(0) \$87(2) \$87(2)(0) both alleged that they were "thrown" into the prisoner van. They did not clarify if this meant that they were physically lifted and heaved into the van, or if they were pushed into the van against their will. \$87(2)(0) stated that she saw both siblings walk into the van, and did not allege any physical force. \$87(2)(0) stated that she saw both siblings walk into the van, and did not allege any physical force. \$87(2)(0) were not lifted and tossed inside. Therefore, a force allegation was not pleaded.
- alleged that she was placed on the floor of the 23<sup>rd</sup> Precinct stationhouse when she reached for her brother's pants. As it is alleged, the force used is not excessive, since it was used to control her and prevent her from interfering with the search of her brother. She also did not suffer any injuries. Therefore, an allegation of force was not pleaded.

# **Investigative Findings and Recommendations**

Allegation A – Force: At \$87(2)(b)	in Manhattan, PO Edgar Figueroa struck
§ 87(2)(b) with an asp.	
Allegation B – Force: At § 87(2)(b)	in Manhattan, PO Daniel Leek struck \$87(2)(b)
with an asp.	<del></del>
Allegation C – Force: At § 87(2)(b)	in Manhattan, officers struck § 87(2)(b)
with an asp.	<del></del>

Page 17 CCRB Case # 201107141

After PO Figueroa informed him that he was under arrest, \$37(2)(b) stated that he was brought to the ground by a group of officers, including PO Figueroa and PO Leek, and then punched, kicked and struck with asps approximately twenty times. \$37(2)(b) also stated that while he was on the ground, officers attempted to handcuff him, but that he resisted their efforts by placing his left arm underneath his body. \$37(2)(b) suffered abrasions to his face and elbows. The abrasions on his face were visible in his arrest photograph, but no medical documentation of his injuries could be found. \$37(2)(b) stated that \$37(2)(b) was struck multiple times with an asp, but did not allege that officers punched or kicked him. \$37(2)(b) held his uncuffed hand underneath his body when he was on the ground, and refused to let officers handcuff him. PO Figueroa and PO Leek stated that no officer punched or kicked \$37(2)(b) or used an asp while attempting to subdue him. PO Figueroa and PO Leek stated that \$37(2)(b) was pushed to the ground, and that once he was on the ground, the arresting officers only tried to pull his arms out from under him.
According to Patrol Guide Procedure 203-11, "Only that amount of force necessary to overcome
resistance will be used to effect an arrest" (Encl. 1A-B). § 87(2)(b). § 87(2)(g)
§ 87(2)(b), § 87(2)(g)
·
Allegation D – Force: At manufacture in Manhattan, PO Edgar Figueroa used his
foot to push § 87(2)(b) s face into the ground.
both alleged that PO Figueroa pushed the right side of \$87(2)(b) s face into the ground with his boot during the struggle. On his arrest
photograph, \$87(2)(b) has abrasions to the right side of his face. PO Figueroa and PO
Leek both denied observing any officer pushing \$87(2)(b) s face into the ground by
any means. No other statements were made regarding this allegation. §87(2)(g)
Allegation E. Forgos At
Allegation E – Force: At in Manhattan, officers used force against
alleged that officers struck him three times in the back after he was
handcuffed. Initially, he had stated that he had not been hit after he had been handcuffed. He did not know which officers struck him, or what kind of blows he received. He did not state whether
he had continued resisting the officers after he was placed in handcuffs. No other civilian
statements corroborated this allegation. He did not allege any injuries as a result of this force. PO
Figueroa and PO Leek both denied striking \$87(2)(b) or seeing any other officers
strike him during the incident. § 87(2)(b), § 87(2)(g)

Page 18 CCRB Case # 201107141

§ 87(2)(g)				
against       \$ 87(2)(b)       \$ 87(2)(b)         Both       \$ 87(2)(b)       \$ 87(2)(b)         by officers.       \$ 87(2)(b)       \$ 87(2)(b)         attempted to physically interfere with	and \$87(2)(b) and \$87(2)(b) stated that h her brother's are e sprayed when ar stated th	alleged that they were pepper sprayed as he was pepper sprayed when she rest. \$\frac{857(2)(b)}{5}\$ stated that she and a officer ordered them to step away from the witnessed \$\frac{87(2)(b)}{5}\$ being any at \$\frac{87(2)}{5}\$ though he did not		
see any officers using it. soleto				
		ecinct stationhouse, Sgt. George Rivera		
authorized the strip search of alleged that he		ed by two unidentified officers at the		
	all, Sgt. Rivera w	as assigned as desk sergeant at the time of		
September 29, 2011, it was confirme		*		
Team:				
		:		
Investigator:				
Signature	Print	Date		
Supervisor:				
Title/Signature	Print	Date		
Reviewer:	Doi: 1.4	D.		
Title/Signature	Print	Date		
Reviewer: Title/Signature	Print			
i inc/signature	FIIIIL	Date		

Page 19 CCRB Case # 201107141